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BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Legislation Authorized Benefits Without Adequate Evidence Of Black Lung Or Disability

COMPLETED

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The Federal Coal Mine Health and Safety Act, as amended, authorized the Department of Labor to approve black lung claims based on conflicting or inconclusive medical evidence, affidavits from spouses and others, or presumptions based on years of coal mine employment. GAO believes that medical evidence should be the basis for determining disability and death from black lung and that benefits should be awarded only to miners who are totally disabled by black lung or to their survivors. This report (1) suggests that the Congress consider amending the black lung legislation and (2) recommends that Labor provide more guidance on the evidence needed to rebut certain legislative presumptions and establish additional procedures for resolving conflicting medical evidence.

Legislation passed by the Congress in December 1981 should resolve a number of GAO's concerns and result in better evidence to support approval of future black lung benefit claims.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

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To the President of the Senate and the
Speaker of the House of Representatives

This report discusses the Department of Labor's basis for approving black lung benefit claims. Labor's approval of these claims was consistent with the Federal Coal Mine Health and Safety Act, as amended. The report also discusses our belief that adequate medical evidence should be used to establish eligibility for black lung benefits.

Our review was requested by Congressman John N. Erlenborn to identify whether legislative changes are needed to ensure that black lung benefits are awarded only to miners totally disabled by black lung or to their survivors. In December 1981, the Congress passed amendments to the Black Lung Benefits Act which address some of our concerns and which should result in better evidence to support the approval of future black lung benefit claims.

Copies of this report are being sent to the Director, Office of Management and Budget, and the Secretary of Labor.

Charles A. Bowsher

Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE CONGRESS

LEGISLATION AUTHORIZED BENEFITS WITHOUT ADEQUATE EVIDENCE OF BLACK LUNG OR DISABILITY

D I G E S T

GAO found that, for most black lung claims approved by the Department of Labor, the medical evidence was not adequate to establish disability or death from coal workers' pneumoconiosis--commonly called "black lung." However, Labor's approval of these claims was consistent with the Federal Coal Mine Health and Safety Act, as amended. The act and Labor's regulations authorized approval of black lung claims on the basis of (1) conflicting and inconclusive medical evidence, (2) affidavits from spouses and others, (3) presumptions based on years of coal mine employment, and (4) interim standards that could be no more restrictive than the standards used by the Social Security Administration (the Federal agency that had previously administered the program). (See p. 3.) GAO believes that these provisions did not ensure that black lung benefits were awarded only to miners disabled from black lung or to their survivors.

At the request of Congressman John N. Erlenborn, GAO evaluated Labor's basis for approving black lung benefit claims and identified possible legislative changes to ensure that black lung benefits were awarded only to miners disabled from black lung or to their survivors.

ESTABLISHING ELIGIBILITY FOR BENEFITS

According to National Institute for Occupational Safety and Health officials, the term "black lung" encompasses coal workers' pneumoconiosis as well as other respiratory diseases that may arise out of coal mine employment. (See p. 2.)

Persons claiming eligibility for black lung benefits are required by legislation to provide medical or other relevant evidence to show that there was total disability from the disease and that it resulted from coal mine employment. The legislation provided that, where there was no medical or other relevant evidence in the case of a deceased

miner, affidavits were to be considered sufficient evidence in establishing disability or death from black lung.

LEGISLATION AUTHORIZED AWARD OF BENEFITS WITHOUT ADEQUATE MEDICAL EVIDENCE

A GAO scientific sample of 450 black lung claims showed that Labor approved 205 of them. Although many claimants had medical impairments, 84 percent (172 of 205) of these claims had inadequate medical evidence to establish disability or death from black lung. Labor used the following bases, which were consistent with the black lung legislation, for approving these claims:

--Presumptions of black lung, disability, or death from black lung based on years of coal mine employment--104 claims. (See p. 11.)

--Medical evidence, such as X-rays, pulmonary function, or blood gas test results, which conflicted with other evidence in the files--55 claims. (See p. 14.)

--Affidavits describing the deceased miner's condition with no supporting medical evidence of disability or death from black lung--7 claims. (See p. 18.)

--Physicians' medical opinions without adequate corroborating medical evidence--6 claims. (See p. 19.)

In addition, some claimants were awarded benefits for asthma and other respiratory conditions which, according to GAO's medical advisor, may be aggravated but are not usually caused by coal mine employment. (See p. 20.)

For claims filed after March 30, 1980, Labor applied new standards--developed in consultation with the National Institute for Occupational Safety and Health--for determining disability from black lung. In applying these standards to the 205 Labor-approved claims in its sample, GAO found that, had they been in effect during the time of its review, Labor would have approved

only 111 of the claims. However, because the provisions in the black lung legislation authorized the use of presumptions, conflicting or inconclusive medical evidence, or affidavits, Labor would still have had to approve 88 of the 111 claims even though there was inadequate medical evidence of disability or death from black lung. (See p. 21.)

MATTERS FOR CONGRESSIONAL CONSIDERATION

GAO recognizes that the Congress enacted the black lung legislation and its amendments to (1) establish a program to benefit coal miners who are disabled by coal workers' pneumoconiosis and (2) liberalize the eligibility requirements so that additional miners or their survivors could receive program benefits. GAO believes that medical tests to diagnose pneumoconiosis and to establish disability have a high degree of accuracy and reliability. Because of this belief, GAO's draft of this report suggested that the Congress consider amending the black lung legislation to

--redefine black lung as coal workers' pneumoconiosis, a chronic dust disease arising out of coal mine employment that permanently damages the lungs;

--eliminate the presumptions of pneumoconiosis or disability due to pneumoconiosis based on years of coal mine employment;

--eliminate the use of affidavits to establish death or disability from pneumoconiosis;

--allow Labor to re-read X-ray interpretations for purposes of evaluating and deciding black lung claims; and

--require that medical evidence be the basis for establishing (1) the presence of pneumoconiosis and (2) disability due to black lung.

In December 1981, the Congress passed legislation to amend the Black Lung Benefits Act. These amendments, which will affect future claims, address many of GAO's concerns related to the use of presumptions, Labor's re-reading of X-rays, and the

use of affidavits. However, these amendments do not (1) change the legislative definition of pneumoconiosis, (2) prohibit all affidavits, or (3) require that disability determinations be based solely on medical test results.

Appendix IV contains suggested changes to the Black Lung Benefits Act, as amended, to address the issues mentioned above that are not covered by the December 1981 changes to the act.

RECOMMENDATIONS TO THE SECRETARY OF LABOR

The Secretary of Labor should (1) provide specific guidance on the quantity and quality of evidence needed to rebut certain presumptions related to claims filed before the effective date of the December 1981 amendments to the black lung legislation and (2) establish additional procedures to resolve conflicting medical evidence. (See p. 25.)

AGENCY COMMENTS

Labor concurred with GAO's recommendation and stated that the Department's policy guidance regarding evidence to rebut certain legislative presumptions and resolve conflicting medical evidence needed to be expanded.

Labor also concurred with suggestions contained in GAO's draft of this report that the Congress consider amending the black lung legislation. In October 1981, Labor submitted a proposal to amend the Federal Coal Mine Health and Safety Act that was similar to the legislation that the Congress passed. The proposal, however, did not change the legislative definition of pneumoconiosis, and without this change, GAO believes that Labor will have to continue to approve claims for pulmonary and respiratory impairments which may be aggravated but are not usually caused by coal mine dust. (See p. 26.)

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ABBREVIATIONS

GAO	General Accounting Office
NIOSH	National Institute for Occupational Safety and Health
SSA	Social Security Administration

CHAPTER 1

INTRODUCTION

In November 1968, a coal mine explosion and fire that killed 78 miners in West Virginia focused national attention on the working conditions of coal miners. In 1969 hearings the Subcommittee on Labor, Senate Committee on Labor and Public Welfare, and the General Subcommittee on Labor, House Committee on Education and Labor, examined coal mine safety laws and the problems of coal workers' pneumoconiosis--commonly called "black lung." These hearings led to enactment of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 801), which established a Federal black lung benefits program for coal miners.

This act provides for monthly benefits to miners totally disabled by black lung and to their survivors. The black lung benefits program was the first program at any governmental level to provide benefits to victims of a single occupational disease. Since enactment of this legislation through June 1981, about 487,000 miners or their survivors have received about $11 billion in benefits.

In July 1980, we reported 1/ on the Social Security Administration's (SSA's) re-review of previously denied black lung claims which the agency approved under the 1977 amendments to the Federal Coal Mine Health and Safety Act. In the SSA report, we stated that, for 88.5 percent of the 200 claims that we randomly sampled, the medical evidence was not adequate to establish a coal miner's disability or death from black lung.

OBJECTIVES, SCOPE, AND METHODOLOGY

Congressman John N. Erlenborn asked us to review Labor's bases for approving black lung benefit claims and to identify whether legislative changes were needed to ensure that black lung benefits are awarded only to miners totally disabled from black lung or to their survivors.

To evaluate Labor's bases for approving black lung benefit claims, we reviewed the Federal Coal Mine Health and Safety Act, as amended, and its legislative history; Labor's regulations pertaining to the act; and a random sample of black lung claims selected from the Labor offices that processed these claims. We also interviewed Labor officials who administered the black lung program. This review was performed in accordance with our "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

1/"Legislation Allows Black Lung Benefits To Be Awarded Without Adequate Evidence of Disability" (HRD-80-81, July 28, 1980).

Because our review showed that there was no medical evidence or apparently conflicting medical evidence in most claims files, our medical advisor established criteria to determine the adequacy of the medical evidence for establishing black lung or total disability from black lung. We also discussed the diagnosis of black lung and the adequacy and reliability of medical tests for determining total disability from black lung with various respiratory and pulmonary specialists. Additional details related to our sample and our criteria for determining the adequacy of the medical evidence are contained in chapter 3.

Appendix I lists other reports on the black lung benefits program that we have issued to the Congress, congressional committees, or individual Congressmen. These reports addressed various issues, including mine safety, administration of the black lung benefits program, and adjudication of black lung benefit claims.

DEFINITION OF PNEUMOCONIOSIS

Coal workers' pneumoconiosis is a respiratory disease caused by the inhalation of excessive amounts of coal mine dust. Over time the disease produces progressive destruction of lung tissue, resulting in the reduction of the lungs' ability to transfer oxygen to the blood.

Coal workers' pneumoconiosis occurs in two forms--simple and complicated. Simple pneumoconiosis is usually characterized by a profusion of small opacities (lesions) in the lung. Complicated pneumoconiosis, which usually occurs after simple pneumoconiosis, is characterized by conglomerate or massive opacities larger than 1 centimeter in diameter. Complicated pneumoconiosis usually produces marked lung impairment and considerable breathing difficulty. Such breathing disability severely limits the person's physical capabilities and may induce death from heart failure or may contribute to other diseases, such as pneumonia. Once contracted, the disease is irreversible.

According to National Institute for Occupational Safety and Health (NIOSH) officials, the term "black lung" encompasses coal workers' pneumoconiosis as well as other respiratory diseases that may arise out of coal mine employment. By law, pneumoconiosis means any chronic dust disease of the lung, including respiratory and pulmonary impairments arising out of coal mine employment.

FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, AS AMENDED 1/

Under the Federal Coal Mine Health and Safety Act of 1969, the Secretary of Health and Human Services (formerly Health, Education, and Welfare) was responsible for processing black lung claims and for determining whether a miner's total disablity or death was due to black lung. Miners were eligible for black lung benefits if they were totally disabled due to pneumoconiosis arising out of coal mine employment. Dependents (spouses and children) of coal miners were eligible for black lung benefits if the miner's death was due to pneumoconiosis or if the miner was totally disabled by it at death. Benefits were provided to eligible miners who worked in underground coal mines or to their dependents.

The act contained the following three presumptions that the Secretary of Health and Human Services was to use in determining whether a miner was totally disabled or died from pneumoconiosis.

--If a miner who had been employed for 10 years or more in an underground coal mine suffered from pneumoconiosis, it was presumed that the pneumoconiosis was caused by such employment.

--If a deceased miner had been employed for 10 years or more in an underground coal mine and had died from a respiratory disease, it was presumed that the death was due to pneumoconiosis.

--If the miner had complicated pneumoconiosis, it was presumed that the miner was totally disabled or had died from pneumoconiosis.

This act also contained dates, which the 1972 amendments changed, that shifted responsibility for processing claims and administering the program from SSA (a Department of Health and Human Services agency) to Labor. Labor became responsible for processing living miner claims filed after June 30, 1973, and most survivor claims filed after December 31, 1973.

1972 amendments

Amendments in 1972 were enacted to make more individuals eligible for program benefits. In commenting on the 1972 amendments, the March 1977 House Committee on Education and Labor report on the Black Lung Benefits Reform Act of 1977 stated:

1/The Congress passed additional amendments to the Black Lung Benefits Act in December 1981. The effects of these amendments are discussed in footnotes throughout this report.

"With respect to the changes broadening claimant eligibility, it should be noted that the Committee initiated the 1972 amendments in large part because of dissatisfaction with the administration of the law by the Department of Health, Education, and Welfare (Social Security Administration) which in some respects clearly contravened discernible legislative guidelines."

The 1972 amendments (1) provided for benefits to additional dependents--orphans, parents, brothers, and sisters--who lived in an eligible miner's household and who were totally dependent on the miner in the year before the miner's death, (2) extended black lung benefits to surface coal miners and their dependents, (3) provided for the approval of dead miners' claims irrespective of the cause of death, if the miner was totally disabled due to pneumoconiosis at the time of death, and (4) eased the medical evidence requirements for establishing total disability.

With regard to the medical evidence requirements, the 1972 amendments

--provided that no claim for black lung benefits shall be denied solely on the basis of X-ray evidence which failed to establish the existence of pneumoconiosis and

--required that, in determining the validity of claims, all relevant evidence be considered, including medical tests (such as blood gas studies, X-rays, electrocardiograms, pulmonary function studies, or physical performance tests) and any medical history, evidence submitted by the claimant's physician, or his wife's affidavits, and in the case of a deceased miner, other appropriate affidavits from persons with knowledge of the miner's physical condition.

The 1972 amendments also provided that, when pneumoconiosis prevents a miner from engaging in gainful employment requiring his mining skills and abilities, the miner shall be considered totally disabled. Previously, a miner had been considered totally disabled only if he was unable to engage in any substantial gainful work.

The 1972 amendments added a fourth presumption, which stated that, if a miner worked at least 15 years in underground mines and if evidence other than an X-ray demonstrates the existence of a totally disabling respiratory or pulmonary impairment, then it was presumed that the miner's total disability was due to pneumoconiosis, the miner's death was due to pneumoconiosis, or at the time of his death, the miner was totally disabled by pneumoconiosis. According to Labor, the application of this presumption is not limited to employment in underground coal mines. The Secretary

can determine that the conditions of a miner's employment in surface mining were substantially similar to those in an underground mine.

For the most part, the 1972 provisions were retroactive to December 1969.

1977 amendments

The 1977 amendments--the Black Lung Benefits Reform Act of 1977 1/--made a number of changes to remove restrictive provisions in the law which prevented a large number of claimants from receiving benefits. In reporting on a bill to amend the Federal Coal Mine Health and Safety Act, the Senate Committee on Human Resources in May 1977 stated:

> "The broad purposes of the bill reported by the Committee on Human Resources are to remove certain eligibility restrictions for the victims of Black Lung disease and their survivors who should be entitled to benefits; to reaffirm the legislative intent with respect to certain provisions which have been administratively misinterpreted; * * *."

These amendments (1) broadened the definition of pneumoconiosis to include respiratory and pulmonary impairments arising out of coal mine employment, (2) expanded coverage to include individuals who were employed in or around a coal mine in the extraction, preparation, or transportation of coal, (3) allowed the use of affidavits to establish total disability or death due to pneumoconiosis where there is no medical or other relevant evidence in the case of a deceased miner, (4) prohibited the re-reading of X-rays if certain conditions were met, and (5) prohibited the development of additional medical or other evidence if the evidence on file was sufficient for approving the claim.

The 1977 amendments added a fifth presumption, which was that a miner's survivor was presumed eligible if the miner died on or before the date of enactment of these amendments and had at least 25 years' coal mine employment before June 30, 1971, unless it was established that the miner was not partially or totally disabled due to black lung at the time of death.

These amendments required Labor to re-review all previously denied or pending black lung claims using (1) the new requirements contained in the amendments and (2) standards promulgated by Labor that would not be more restrictive than the criteria applicable to a claim filed with SSA on June 30, 1973. The 1977 amendments also

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1/Enacted on March 1, 1978.

required Labor, in consultation with NIOSH, to establish criteria for all appropriate medical tests which accurately reflect total disability in coal miners.

The 1977 amendments required Labor to re-review all previously denied or pending claims. In addition, the amendments required SSA to notify claimants with previously denied or pending claims of the legislative changes and to advise them of the option of having SSA or Labor re-review their claims. Of the 165,000 claims previously denied by SSA, about 119,000 claimants elected to have their claims re-reviewed. Of these claimants, over 82,000 wanted SSA to review their cases and over 36,000 chose Labor. Claims reviewed by SSA and not approved were sent to Labor, where they were reviewed under Labor's eligibility criteria. Labor re-reviewed about 200,000 claims, including about 73,000 SSA claims that had been denied at the time the 1977 amendments were enacted.

ESTABLISHING ELIGIBILITY FOR BLACK LUNG BENEFITS

For miners or survivors to be eligible for benefits, miners must have black lung arising out of coal mine employment and must be totally disabled or have died from the disease.

Each miner who files a claim for black lung benefits is given an opportunity to substantiate the claim by a complete pulmonary evaluation, including a physical examination, chest X-ray, pulmonary function test, and blood gas test. A pulmonary function test determines if the miner's breathing or pulmonary capacity is impaired. A blood gas test determines whether the lung's efficiency in exchanging oxygen and carbon dioxide has been impaired.

According to the respiratory and pulmonary specialists we interviewed, black lung can be diagnosed and disability determined with a high degree of accuracy. Although some doctors stated that X-rays may not show pneumoconiosis in its early stages, the disease is seldom disabling until the lungs are severely damaged.

Respiratory and pulmonary specialists consider the results of a pulmonary function test to be an accurate indicator of lung impairment when used in conjunction with a physical examination and chest X-rays. These specialists are less confident about the reliability of the blood gas test. Some of them praise its reliability for determining disability from black lung, while others question it. This test is costly and may show a disabling blood gas level which is not caused by a respiratory or pulmonary disease. Generally, if the pulmonary function study shows the lung is severely impaired, the blood gas test will usually show an abnormal blood gas level. Trained personnel with properly calibrated equipment must conduct these tests to ensure valid results.

BLACK LUNG BENEFIT PAYMENTS

Black lung benefits paid to eligible claimants equal 50 percent of the minimum monthly payment to a totally disabled Federal employee in grade GS-2, step 1, under the Federal Employees' Compensation Act (5 U.S.C. 8101). 1/ The monthly benefit amount is increased if the miner or survivor has dependents and when Federal salary levels change. As of October 1981, black lung benefit payments ranged from $293.20 a month for a recipient with no dependents to $586.40 a month for a recipient with three or more dependents. The 1977 amendments provided for paying lump-sum benefits retroactive to either the month of onset of total disability or death due to black lung or the date the claim was filed. Retroactive benefits cannot be paid for the period before January 1, 1974.

From enactment of the black lung benefits program in 1969 to June 1981, SSA paid over $9 billion in benefits from appropriated funds to over 365,000 claimants, out of the 527,000 miners and survivors who filed claims. For the period July 1973 through June 1981, the Black Lung Disability Trust Fund paid $1.93 billion in benefits for (1) most of the 97,000 claims approved by Labor out of the more than 285,000 claims Labor reviewed and (2) over 24,500 claims re-reviewed and approved by SSA.

The Black Lung Disability Trust Fund was established by the Black Lung Benefits Revenue Act of 1977, companion legislation to the Black Lung Benefits Reform Act of 1977. This legislation shifted responsibility for black lung benefit payments from the Federal Government to the trust fund in the following cases:

--When no "responsible operator" 2/ can be identified.

--When a coal miner's employment ceased before January 1, 1970.

--During the period in which a "responsible operator" is contesting its liability.

1/ The 1981 amendments changed the benefit rate to 37.5 percent of the monthly pay for Federal employees in GS-2, step 1.

2/ A major purpose of the 1977 amendments was to transfer the responsibility for the payment of black lung benefits from the Federal Government to individual coal mine operators. "Responsible operators," when identified in accordance with procedures established by Labor, are liable for the direct payment of individual miners' black lung benefits.

The trust fund also pays all administrative expenses of the black lung benefits program.

The trust fund is supposed to be financed by a tax on coal sold by producers--50 cents per ton for coal from undergound mines and 25 cents per ton for coal from surface mines limited to 2 percent of the sales price. 1/ Because black lung benefits currently exceed revenues generated by the tax on coal, the fund has also received advances from the Treasury, repayable with interest.

From April 1, 1978, when the fund was established, to June 30, 1981, the fund paid over $2 billion for administrative expenses and benefits to eligible claimants and their survivors. During this period, the fund received coal tax revenues of over $.76 billion and advances of about $1.3 billion from the Treasury.

1/As part of the 1981 legislation, the Congress also amended the Internal Revenue Code to increase, as of January 1, 1982, the tax on coal to $1.00 per ton for underground-mined coal and 50 cents per ton for surface-mined coal limited to a maximum of 4 percent of the coal's sale price.

CHAPTER 2

CLAIMS APPROVED WITHOUT ADEQUATE MEDICAL EVIDENCE OF DISABILITY OR DEATH FROM BLACK LUNG

Black lung legislation and Department of Labor implementing regulations authorized black lung benefits to be awarded without adequate medical evidence of disability or death from black lung. Our review of a random sample of black lung claims indicated that, for 84 percent of 205 claims approved by Labor, either there was no medical evidence of disability or death from black lung or the medical evidence was inconclusive or conflicting.

Although these claims approvals comply with the intent of the law, there is no assurance that benefits are going to miners disabled from black lung or to their survivors. Labor approved the claims on the basis of provisions in the law which (1) authorized presumptions of black lung, disability, or death due to black lung based on years of coal mine employment or a presumption of total disability based on medical evidence of complicated pneumoconiosis and (2) permitted the use of contradictory or inconclusive medical evidence and affidavits.

For claims filed after March 30, 1980, Labor began applying new standards for determining total disability from black lung that the 1977 amendments required Labor to develop in consultation with NIOSH. These new standards (1) established more realistic measures for determining if a miner was totally disabled, (2) automatically revoked the "interim presumptions" previously used by Labor to approve black lung benefit claims, and (3) had the effect of lowering the claims approval rate. However, until the legislation is changed to require that only medical evidence--pulmonary function tests, X-rays, biopsies, and autopsies--be used to establish disability or death from black lung, Labor must continue to approve claims (particularly claims filed before the effective date of the 1981 amendments) in accordance with the legislative provisions which authorize the use of presumptions, affidavits, and inconclusive or conflicting medical evidence. In our opinion, these provisions do not ensure that benefits are provided only to miners disabled from pneumoconiosis or to their survivors.

ANALYSIS OF APPROVED CLAIMS

We reviewed a random sample of 450 black lung claims selected from the nine Labor offices responsible for processing such claims. Labor approved 205 (46 percent) of the claims. Our analysis showed that, although many claimants had medical disorders, 84 percent (172 of 205) of the approved claims had inadequate medical evidence to establish disability or death from black lung.

The sample was selected during the period January to December 1980 and included new claims filed with Labor and claims previously denied by Labor or SSA and re-reviewed by Labor under the 1977 black lung amendments.

Our analysis of the 205 claims Labor approved and the projection of our sample results to the total number of claims Labor approved at the time we took our sample are as follows.

Analysis of Claims Approved
Calendar Year 1980

	Sample		Estimate (note c)	
	Number of claims (note a)	Percentage (note b)	Number of claims (note a)	Percentage
Claims approved with inadequate medical evidence:				
Presumptions	104	50.8	28,900	48.4
Conflicting medical evidence	55	26.8	17,300	29.0
Affidavits	7	3.4	2,000	3.4
Unsupported medical opinion	6	2.9	1,500	2.5
Approved with inadequate medical evidence	172	83.9	49,700	83.3
Claims approved with adequate medical evidence	33	16.1	9,900	16.7
Total approved	205	100.0	59,600	100.0

a/About 4 percent of the approved claims were filed after March 30, 1980, when Labor began applying new standards for determining disability.

b/Throughout the report we use these percentages, which are similar to the weighted estimated percentages.

c/Because the estimates contained in this table were obtained from a sample, they are subject to sampling errors. Sampling errors are the differences, which occur by chance, between the sample results and what would have been obtained by reviewing all claims. Sampling errors for the estimates are given in appendix II.

BENEFITS AWARDED WITHOUT ADEQUATE MEDICAL EVIDENCE

Our analysis of the 205 approved claims in our sample showed that benefits paid to 172 claimants (84 percent) were not based on adequate medical evidence to establish disability or death from black lung. Labor approved these claims based on (1) presumptions of black lung, disability, or death due to black lung based on years of coal mine employment, (2) conflicting medical evidence, (3) affidavits attesting to disability, and (4) physicians' medical opinions without adequate corroborating medical evidence. Labor's approval of these claims complied with the intent of the black lung legislation.

The lack of medical evidence supporting disability or death for the 172 claims contrasts with the medical evidence for the other 33 approved claims. In our opinion, the medical evidence for these 33 claims indicated that the miners had black lung and were totally disabled or died due to the disease. For example, the claims included living miner claims with chest X-rays or biopsies indicating the presence of black lung and medical tests--pulmonary function and blood gas tests--indicating that the miners were disabled. Survivor claims contained such evidence as death certificates or autopsies confirming that death was due to black lung. Although some of the claims also contained some medical evidence that did not support the finding that the miner was disabled or died due to black lung, the preponderance of evidence or the latest medical evidence supported the claim of disability.

Benefits awarded based on presumptions

Labor used the presumptions contained in the black lung legislation or its "interim presumption" to approve 104 (51 percent) of the 205 claims even though the case files, in our opinion, contained inadequate medical evidence to support a determination of disability or death from black lung.

In addition to the presumptions specifically mentioned in the black lung legislation (see ch. 1), the 1977 amendments required Labor to promulgate interim regulations for reviewing claims which could not be more restrictive than the criteria SSA used before July 1, 1973. These regulations contained "interim presumptions" that were more liberal than those contained in the black lung legislation. The "interim presumption" stated:

> "A miner who engaged in coal mine employment for at least 10 years will be presumed to be totally disabled due to pneumoconiosis or to have been totally disabled due to pneumoconiosis at the time of his death or death will be presumed to be due to pneumoconosis arising out of that employment if one of the following medical requirements is met:"

--a chest X-ray, biopsy, or autopsy establishes the presence of pneumoconiosis;

--ventilatory studies establish the presence of a chronic respiratory or pulmonary disease;

--blood gas studies demonstrate the presence of an impairment in the transfer of oxygen from the lung to the blood;

--the medical evidence, including the documented opinion of a physician exercising reasoned medical judgment, establishes the presence of a totally disabling respiratory or pulmonary impairment; or

--in the case of a deceased miner, where no medical evidence is available, the affidavit of the miner's survivor or other persons knowledgeable of the miner's physical condition demonstrates the presence of a totally disabling respiratory or pulmonary impairment.

In commenting on these regulations in the Federal Register, Labor stated:

> "The Department does not agree with the view that the interim standards [containing this presumption] cannot as a matter of law be more favorable to claimants than the Social Security Administration's standards. The Act requires only that the Department's standards be no more restrictive than those applied by the Social Security Administration."

Four of the five legislative presumptions and the interim presumption can be rebutted; 1/ however, Labor rarely attempted to rebut these presumptions even when there was medical evidence indicating that the miners were not disabled from black lung. According to Labor's regulations containing the interim presumptions:

> "The Act embodies the principle that doubt is to be resolved in favor of the claimant * * *"

1/Under the 1969 act, a miner with X-ray evidence of complicated pneumoconiosis is presumed to be totally disabled, and this presumption is irrebuttable. Under the 1981 amendments, three of the five legislative presumptions will be eliminated. The irrebuttable presumption and the presumption related to pneumoconiosis being caused by coal mine employment will remain.

"This does not mean that the single item of evidence [supporting the claims] * * * is overcome by a single item of evidence which rebuts the presumption."

Labor provided general policy guidance to claims examiners that stated that the presumptions were rebuttable. However, a Labor official told us that Labor was concerned about getting claims approved and that the guidance for rebutting presumptions did not specifically state what type and how much evidence was needed to deny a claim. In addition, numerous Labor field officials told us that, because rebuttable evidence was not specifically defined, they ignored medical evidence that could have been used to rebut the claim.

Examples of claims Labor approved on the basis of presumptions follow:

--In November 1978, Labor received a claim for black lung benefits from a 71-year-old former miner with 10 years' proven coal mine employment. In May 1979, a physician who examined the claimant stated that the claimant showed "symptoms of chronic bronchitis of a mild nature but no objective pulmonary impairment." The miner also had a positive X-ray for simple pneumoconiosis, a negative pulmonary function test, and a negative blood gas test for disability. A B-reader 1/ re-read the X-ray for quality and found no evidence of pneumoconiosis. While all the medical tests showed the claimant was not disabled, Labor approved the claim on April 7, 1980, citing the positive X-ray and its interim presumption of disability arising out of coal mine employment. The miner received a retroactive lump-sum payment of $6,114 and a monthly benefit payment of $381.

--In February 1977, a 54-year-old former miner with 10 years' proven coal mine employment submitted a claim to Labor for black lung benefits. After an April 1977 examination, a physician concluded that the claimant had advanced general arteriosclerosis (hardening of the arteries) that made him unfit for physical work. The physician also stated that the claimant had a mild degree of coal miners' pneumoconiosis that was not disabling. In April 1977, an X-ray showed simple pneumoconiosis and a pulmonary function test indicated no disability. A B-reader later re-read this X-ray as negative for pneumoconiosis. On November 10, 1977, the

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1/Physicians who have taken a special course and passed tests developed by NIOSH to qualify them to read X-rays for the diagnosis of pneumoconiosis.

claimant died of cancer. Labor denied the claim on January 24, 1978, because the evidence failed to show the miner was disabled due to black lung. On January 4, 1978, the claimant's widow filed a claim for benefits that Labor reviewed under the 1977 amendments. In June 1979, Labor approved the widow's claim citing the 10 years' presumption of death due to coal workers' pneumoconiosis, the positive X-ray, and the physician's diagnosis of pneumoconiosis. The widow received a retroactive lump-sum payment of $8,045 and a monthly benefit payment of $232.

--A 61-year-old miner filed with Labor for benefits in October 1978. He reported 42 years' coal mine employment. During 1979, the claimant took a pulmonary function test and a blood gas test--both with negative results. An April 1979 X-ray was interpreted as positive for pneumoconiosis but re-read by a B-reader (for quality) as negative in May 1979. In May 1979, a physician examined the miner and diagnosed a mild to moderate chronic obstructive pulmonary disease and pneumoconiosis. In August 1979, another X-ray was taken and interpreted as negative, and another physical examination indicated the claimant was "neither partially nor totally disabled from coal workers' pneumoconiosis." While all medical tests for disability proved negative, Labor approved the claim in June 1979, based on the interim presumption of disability related to years of coal mine employment, the positive X-ray interpretation, and the physician's diagnosis. The miner received a retroactive lump-sum payment of $4,854 and a monthly benefit payment of $381.

Benefits awarded based on conflicting medical evidence

Labor approved 55 (27 percent) of the 205 claims on the basis of medical evidence establishing disability or black lung that, in our opinion, conflicted with other medical evidence in the claimant's file.

Labor, in commenting on a report we previously issued, 1/ stated that claims examiners are required to analyze all evidence in a file and that the black lung program manual assigns weight to various pieces of conflicting evidence by such factors as the age of the evidence and the thoroughness of the report. However, numerous Labor officials told us that, because of the emphasis on approving claims and giving the benefit of the doubt to claimants,

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1/Report to Senator Richard S. Schweiker on followup on Department of Labor's actions on GAO's July 1977 report on administration of the black lung benefits program (HRD-80-111, Sept. 25, 1980).

claims were approved despite the presence of medical evidence indicating that the miner did not have black lung or was not disabled. Also, the cases in our sample showed no evidence that claims examiners attempted to resolve conflicting medical evidence.

Following are examples of conflicting medical evidence we found in the files:

--Chest X-ray results differed; that is, one X-ray was interpreted as positive for black lung while another was not.

--The same X-ray was interpreted both positively and negatively for pneumoconiosis.

--X-rays indicated pneumoconiosis was present, and the file contained some medical evidence that supported a disability determination and other medical evidence that did not.

The 1977 amendments provide that, where other evidence of pulmonary or respiratory impairments exists, Labor is required--if various conditions are met--to accept the positive X-ray reading by the claimant's physician. 1/ By law, Labor could not have other experts re-read these X-rays if the X-rays (1) were of acceptable quality, (2) were taken by a qualified technician, (3) were initially interpreted by a board-certified or board-eligible radiologist, 2/ and (4) were not fraudulently misrepresented.

Labor normally sent X-rays to its B-readers to determine the X-rays' quality. Besides re-reading X-rays for quality, B-readers interpreted them for the presence or absence of black lung. Labor officials told us that they consider their B-readers to be the most qualified individuals for reading X-rays for black lung. In addition, the American College of Radiology told us:

> "Thus, it is fair to conclude that those radiologists and other physicians who have passed the B-reader examination have in fact demonstrated a level of proficiency in the interpretation of chest radiographs which is more specific and thus more specifically reliable than is the much broader certification by the American Board of Radiology."

1/The 1981 amendments allow Labor to re-read X-rays for claims filed on or after the amendments' effective date.

2/Board-eligible radiologists are physicians specializing in radiology who have fulfilled the requirements set forth by the American Board of Radiology and have been found eligible to participate in examinations leading to board certification in radiology.

While the 1977 amendments prohibited the use of negative re-readings of X-rays to deny claims, Labor used a positive re-reading of an X-ray by a B-reader to override a board-certified or board-eligible radiologist's negative interpretation of an X-ray.

Our analysis of the 205 approved claims showed that B-readers re-read 164 X-rays. Of these X-rays, 57 (35 percent) initially read as positive for black lung were re-read by B-readers as negative. The table below shows our analysis of the X-ray re-readings.

Results of B-reader Re-readings of X-rays for the 205 Approved Claims in our Review

Initial reading	B-reader re-reading	Total	Percent of total (note a)
Positive	Negative	57	34.8
Positive	Positive	45	27.4
Negative	Negative	41	25.0
Negative	Positive	16	9.8
	Invalid	5	3.0
		164	100.0

a/Unweighted percentages based on the total number of re-read X-rays in our sample.

While X-rays generally provide the evidence to establish the presence of pneumoconiosis, the results from pulmonary function tests or blood gas tests, together with the physical examination, generally provide the evidence of total disability required by the black lung legislation. Pulmonary and respiratory specialists 1/ we spoke with indicated that these medical tests, particularly the pulmonary function test, can be used with a high degree of reliability to determine disability.

In our opinion, conflicting medical evidence--differences in X-ray interpretations, differences between X-rays and differences in other medical test results--can generally be resolved either by the parties who disagree or by third-party arbitrators.

1/Past or present officers of national organizations representing specialists involved with the diagnosis and treatment of respiratory and pulmonary impairments or researchers or practitioners involved in examining miners and diagnosing their health condition.

Following are examples of claims that, in our opinion, Labor approved based on unresolved conflicting medical evidence.

--A 58-year-old former miner with 10 years' proven coal mine employment filed for black lung benefits with SSA in March 1972 and Labor in April 1977. Based on SSA's review of (1) a September 1970 X-ray (negative), (2) a March 1971 X-ray (negative), and (3) a September 1972 pulmonary function test (no disability), SSA denied the claim in May 1973, citing the lack of medical evidence of disability due to black lung.

Labor, in reviewing the claim, considered the above and the following evidence:

1. A June 1973 X-ray (negative and re-read as negative), a November 1976 X-ray (positive and re-read as negative), and a July 1977 X-ray (negative).

2. A June 1973 pulmonary function test (disabled), a November 1974 pulmonary function test (no disability), a July 1977 pulmonary function test (no disability), and July 1979 pulmonary function and blood gas tests (no disability).

3. A June 1973 physical examination (chronic bronchitis, emphysema, and disabled), an October 1976 physical examination (totally disabled due to moderately severe black lung), a July 1977 physical examination (no black lung disability), and a December 1978 physician's examination (diabetes, coronary heart disease, arthritis, and myocardial infarction (heart attack)).

Labor denied the claim in January 1978 and June 1979, citing a lack of medical evidence of disability due to black lung.

In September 1980, Labor re-reviewed and approved the claim, citing the medical tests and physical examinations that indicated the miner was disabled due to black lung. The miner received a retroactive lump-sum payment of $25,716 and a monthly benefit payment of $381.

--In June 1978, a 70-year-old former miner with 10 years' established coal mine employment applied to Labor for black lung benefits. In February 1979, the claimant took a pulmonary function test that indicated he was disabled and a blood gas test that indicated he was not. The X-ray taken during the same month was interpreted as positive for pneumoconiosis and re-read by a B-reader in March 1979 as negative. A physician examined the claimant in February 1979 and diagnosed pulmonary fibrosis and chronic bronchitis

due to coal mine employment. Labor denied the claim in June 1979, citing a lack of disability and causality, but approved the claim 1 month later, stating that disability, disease, and causality had been established. The miner received a retroactive lump-sum payment of $4,799 and a monthly benefit payment of $348.

Benefits awarded based on affidavits

Labor approved 7 (3 percent) of the 205 claims based on affidavits describing the deceased miner's physical condition. Our analysis showed that either these claims contained no other medical evidence or the medical evidence indicated that the miner had not been disabled or had not died from black lung.

The black lung legislation requires Labor to consider affidavits as relevant medical evidence in determining the validity of claims. 1/ The legislation also states that, if there is no medical or other relevant evidence in the case of a deceased miner, affidavits shall be considered sufficient to establish that the miner was totally disabled from black lung.

Since enactment of the black lung legislation in 1969, Labor and the Department of Health and Human Services have conducted widespread public information campaigns to inform individuals of the program's benefits. (Labor officials told us these campaigns reflected the clear congressional intent to notify individuals who may have become eligible for benefits after the amendments to the black lung legislation were enacted.) In addition, under the Federal Coal Mine Health and Safety Act, miners have the opportunity to have periodic chest X-rays to determine the presence of pneumoconiosis. Therefore, the need to rely on the use of affidavits to establish eligibility for program benefits should be greatly diminished over time. In fact, a comparison of the results of our review of SSA-approved claims--claims submitted in the early years of the program--with the results of our review of Labor-approved claims seems to support this opinion. SSA approved 78 of 200 claims based on affidavits, while Labor approved only 7 of 205 claims on this basis. Furthermore, we would expect most future claims for black lung benefits to come from living miners who have had the opportunity to undergo medical tests. Therefore, Labor should rarely have to rely solely on affidavits to establish a deceased miner's survivors' eligibility for program benefits.

An example of a claim Labor approved on the basis of affidavits follows.

1/For claims filed on or after the effective date of the 1981 amendments, only affidavits from persons not eligible for benefits will be permitted.

--In June 1973, a 57-year-old former miner with 11 years' coal mine employment filed with SSA for black lung benefits. In August 1973, a pulmonary function study indicated no disability, and an X-ray showed no evidence of pneumoconiosis. SSA denied the claim (date unavailable) because the claimant lacked evidence of disability due to black lung. The claimant died on September 28, 1977. The death certificate listed his cause of death as myocardial infarction due to arteriosclerotic cardiovascular heart disease (resulting from generalized hardening of the arteries). SSA re-reviewed the miner's claim under the 1977 amendments and again denied the claim in March 1979, citing a lack of medical evidence.

Labor also re-reviewed the miner's claim under the 1977 amendments and denied the claim in June 1980 citing no evidence of disease or disability.

Meanwhile, the claimant's widow had filed a survivor claim with Labor in October 1977. The widow submitted an affidavit from herself, the decedent's brother-in-law, and a friend stating that the miner was asthmatic, had anthrosilicosis (disease of the lungs due to inhalation of coal dust and silica), and was disabled. On June 2, 1980 (the day Labor denied the living miner claim), Labor approved the survivor claim on the basis of the affidavits. The widow received a retroactive lump-sum payment of $7,660 and a monthly benefit payment of $254.

Benefits awarded based on medical opinions without adequate corroborating medical evidence

Labor approved 6 (3 percent) of the 205 claims based on a physician's medical opinion. However, the files for each of these claims contained (1) no medical evidence of disability due to black lung other than the physician's statement or (2) medical evidence that conflicted with the medical opinion used to approve the claim.

The black lung legislation requires Labor to consider all relevant evidence, including evidence submitted by a claimant's physician, in determining the validity of claims. In our opinion, physicians' statements, in the absence of supporting medical evidence and in view of the reliability of medical tests for determining disability, should not be considered adequate medical evidence to establish disability due to black lung.

An example of a claim approved based on an unsupported medical opinion follows:

--In December 1974, Labor received an application for black lung benefits from a 76-year-old former coal miner with 11

years' proven coal mine employment ending in 1926. In January 1975, an examining physician concluded that the claimant had slight pneumoconiosis with no impairment. The claimant's X-ray was negative for black lung, and his pulmonary function study showed no disability. Labor initially denied the claim in April 1975, citing no evidence of black lung or disability. The miner appealed the decision and had another physician examine him in late April 1975. The physician stated that the claimant had chronic bronchitis and was impaired. The claimant's X-ray and pulmonary function study again showed no black lung or disability. Labor denied the claim a second time in September 1976, citing no evidence of black lung or disability. The miner died on December 30, 1978, and his death certificate listed the cause of death as an intracranial hemorrhage brought about by a brain tumor.

In January 1980, the decedent's widow filed a survivor claim with Labor under the 1977 amendments. Information in the file dated March 1980 stated that the treating physician reported an X-ray (taken in 1972, but not in the file) indicating minimum interstitial fibrosis (scarring of the lung tissue), but not treatment for chronic obstructive pulmonary disease. Despite the negative and unsupportive evidence in the case file, Labor approved the claim in April 1980, citing the "weight of evidence" of the physician's opinion establishing the presence of a disabling respiratory condition. The survivor received an $18,548 retroactive lump-sum benefit and a monthly benefit payment of $254.

BROADENED DEFINITION OF PNEUMOCONIOSIS INCLUDES OTHER PULMONARY AND RESPIRATORY IMPAIRMENTS

In addition to the problems related to the adequacy of the medical evidence to support a determination of disability or death due to black lung, we found that Labor awarded some claimants benefits for disability or death from such respiratory or pulmonary diseases as asthma, bronchitis, and emphysema with no medical evidence of coal workers' pneumoconiosis. According to our medical advisor, some of these respiratory conditions may be aggravated but are not usually caused by coal mine employment. Moreover, some of these conditions (such as asthma and bronchitis) do not usually permanently damage the lungs, and once the miner is removed from the coal mine, the condition could be improved or eliminated.

The 1977 amendments expanded the definition of pneumoconiosis from "a chronic dust disease of the lung arising out of employment in a coal mine" to "a chronic dust disease of the lung and its

sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment." Labor's regulations state that, for purposes of this definition, a disease arising out of coal mine employment includes any chronic pulmonary disease resulting in respiratory or pulmonary impairment significantly related to, or aggravated by, dust exposure in coal mine employment.

Information in the case files frequently indicated that the claimants had medical disorders, some of which included pulmonary and respiratory impairments that may be aggravated but are not usually caused by coal mine employment. While these impairments meet the legislative definition of pneumoconiosis, some of them may not necessarily result in a progressive and irreversible disability that is caused by coal workers' pneumoconiosis (see ch. 1).

An example of a claim awarded based on the broadened definition of pneumoconiosis follows:

--In April 1975, a 62-year-old former miner with 15 years' proven coal mine employment filed for black lung benefits. His last coal mine employment was in 1953. X-rays, taken in July 1975 and May 1980, did not show pneumoconiosis. A Labor B-reader also found no evidence of pneumoconiosis on the July 1975 X-ray. A blood gas test taken on May 13, 1980, indicated a normal blood gas exchange--no disability. June 1975 and May 1980 pulmonary function studies indicated that the claimant was disabled. An examining physician in July 1975 diagnosed bronchial asthma and a chronic obstructive pulmonary disease due to smoking. Another physician examined the claimant in May 1980 and found no pneumoconiosis. Labor approved the claim in June 1980 because of the positive pulmonary function studies and the physician's comments on the July 1975 physical examination. The claimant received a $13,405 retroactive lump-sum payment and a monthly benefit of $254.

LABOR'S NEW STANDARDS FAIL TO RESOLVE PROBLEMS

For claims filed after March 30, 1980, Labor applied new standards for determining disability due to black lung. These standards (1) contain more detailed pulmonary function and blood gas test values to be used in determining total disability and (2) revoke the interim presumption that Labor promulgated after the 1977 amendments to the black lung legislation. (See p. 11.) The regulations that contained these new standards appear to have significantly contributed to the reduction in the claims approval rate--from 45 percent (205 claims approved out of 450 received) at the time of our review to about 15 percent in June 1981. However, because the provisions in the black lung legislation that authorized

the use of presumptions and permit the use of affidavits and inconclusive or conflicting medical evidence still exist, we believe that the previously discussed problems of inadequate medical evidence to establish disability or death from black lung will continue. 1/

The 1977 amendments to the black lung legislation required Labor, in consultation with NIOSH, to establish criteria for medical tests that accurately reflect total disability in coal miners. These criteria--contained in regulations (20 CFR 718) which became effective on March 31, 1980--specify the procedures and requirements to be followed in conducting medical examinations and administering medical tests and establish more detailed pulmonary function and blood gas test values to be applied in determining a miner's total disability. Respiratory and pulmonary specialists told us that they consider the new test values under Labor's "permanent standards" to be reasonable criteria for determining disability due to black lung.

In applying these new standards to the 205 Labor-approved claims in our sample, we found that, had the new regulations been in effect during the time of our review, the claims approval rate would have decreased by about 45 percent--from 205 to 111 approvals. The following table contains our evaluation of the claims approval rates had the new standards been used.

	Standard in effect at time of review	New standards
Total claims	450	450
Cases approved--inadequate medical evidence:		
Presumptions	104	30
Conflicting medical evidence	55	45
Affidavits	7	7
Unsupported medical opinion	6	6
Total	172	88
Cases approved--adequate medical evidence	33	23
Total claims approved	205	111
Claims approval rate	45%	24.7%

1/As a result of the 1981 amendments, these problems should occur less frequently as older claims are decided.

As shown, claims approved using presumptions would have decreased the most. However, Labor would have still approved--using the new standards--88 of the 111 claims using presumptions, affidavits, or conflicting or inconclusive medical evidence. In addition, while our analysis showed that, if the new standards had been in effect at the time of our review, Labor's claims approval rate would have been 24.7 percent, Labor statistics for June 1981 indicated that the actual approval rate of black lung claims was about 15 percent. In our opinion, this difference in the claims approval rate could also be attributed to different characteristics between the miners in our sample and those currently filing claims.

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As further support for our view that Labor approved many claims without adequate medical evidence of disability, but consistent with the intent of the black lung legislation, we identified a June 1980 medical study on respiratory disability in coal miners which showed that only 10 of 194 miners claiming total disability had pulmonary function or blood gas test results that met Labor's criteria for disability. Our followup on 191 1/ of these miners showed that Labor had approved 97 and SSA had approved 3 of their claims--10 times as many approved claims as the study indicated were totally disabled. Additional information on this study is contained in appendix III.

CONCLUSIONS

Our review of Labor's processing of black lung claims showed that liberalized black lung legislation, along with Labor's implementing regulations, authorized Labor to award black lung benefits without adequate evidence of disability or death from black lung. In our opinion, black lung can be diagnosed and disability established with a high degree of accuracy and reliability in claims from living miners. Therefore, medical evidence, such as X-rays and pulmonary function tests, should be used as the basis for determining eligibility for black lung benefits.

The Federal Coal Mine Health and Safety Act of 1969, as amended, authorized Labor to use presumptions of black lung, disability, or death due to black lung based on years of coal mine employment and permitted Labor to approve claims with conflicting medical evidence, accept affidavits, and use unsupported medical opinions to establish disability or death from black lung. Regarding claims Labor approved based on the above, we believe that:

1/The medical staff that conducted these tests could not give us data to identify three of the miners.

--Presumptions of black lung or disability due to black lung based on years of coal mine employment are unwarranted because black lung can usually be diagnosed and disability determined.

--Efforts to resolve conflicting medical evidence, particularly different X-ray interpretations that the law prevents Labor from using in deciding cases, should be made before approving claims.

--Physicians' opinions should be supported by the results from objective medical evidence, such as X-rays and pulmonary function tests.

--Affidavits to support a claim are no longer warranted. Because of the widespread publicity associated with the black lung program, most eligible survivors have already filed for and are receiving benefits. Living miners have the opportunity to be periodically tested for pneumoconiosis and to submit a claim when they believe they may be entitled to black lung benefits.

We also believe that, unless the legislative definition of pneumoconiosis is revised, Labor will have to continue to approve claims for pulmonary and respiratory impairments which may be aggravated but are not usually caused by coal mine dust.

Labor's regulations (20 CFR 718) that contain the new standards for determining total disability and revoke Labor's interim presumption reduced the claims approval rate. However, the problems with the adequacy of the medical evidence to support a determination of disability from black lung will continue until legislative changes are made. 1/

MATTERS FOR CONGRESSIONAL CONSIDERATION

We recognize that the Congress enacted the Federal Coal Mine Health and Safety Act of 1969 and its amendments to (1) establish a program to benefit coal miners who suffered from coal workers' pneumoconiosis and (2) change the requirements related to the establishment of disability or death due to black lung so that

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1/In December 1981, the Congress passed legislation to amend the Black Lung Benefits Act. These amendments, which will affect future claims, address many of our concerns related to the use of presumptions, the re-reading of X-rays, and the use of affidavits. However, the amendments do not (1) change the legislative definition of pneumoconiosis, (2) prohibit the use of all affidavits, or (3) require that disability determinations be based solely on medical test results.

additional miners or their survivors could be eligible for program benefits.

Because medical tests with a high degree of accuracy and reliability are available, we believe that black lung benefits should be awarded only to coal miners disabled from pneumoconiosis or to their survivors. In our draft of this report, we suggested that the Congress consider amending 1/ the black lung legislation to

--redefine black lung as coal workers' pneumoconiosis, a chronic dust disease arising out of coal mine employment that permanently damages the lungs;

--eliminate the presumptions of pneumoconiosis or disability due to pneumoconiosis based on years of coal mine employment;

--eliminate the use of affidavits to establish death or disability from pneumoconiosis;

--allow B-readers to re-read X-ray interpretations to evaluate and decide black lung claims; and

--require that medical evidence be the basis for establishing (1) the presence of pneumoconiosis and (2) disability due to black lung.

Appendix IV contains suggested changes to the Black Lung Benefits Act to address those issues mentioned above that are not covered by the December 1981 changes to the act.

RECOMMENDATION TO THE SECRETARY OF LABOR

We recommend that the Secretary

--provide guidance on the quantity and quality of evidence needed to rebut certain presumptions for claims filed before the effective date of the 1981 amendments and

--establish additional procedures to resolve conflicting medical evidence.

1/See footnote, page 24.

AGENCY COMMENTS

In commenting on our draft report (see app. V), Labor concurred with our recommendation and stated that the Department's policy guidance regarding evidence to rebut the legislatively rebuttable presumptions and resolve conflicting medical evidence needed to be expanded. Labor commented that several administrative and court decisions made during fiscal year 1981 addressing this subject will be reflected in upcoming revisions of the Coal Mine Procedures Manual which provides policy guidance. Labor also stated that some additional policy guidance has already been specifically addressed in the manual.

Labor was concerned that our conclusions did not adequately recognize that the application of legislated presumptions, limitations on the use of evidence, and the requirements to consider affidavits were mandatory. Labor pointed out that the concern for getting claims approved was consistent with administration policy and congressional intent and that the 1977 amendments prohibited developing additional medical or other evidence if the evidence on file was sufficient to approve the claim. We agree that Labor's approval of black lung claims was consistent with congressional intent and that the black lung legislation was the reason that Labor approved claims without adequate medical evidence of disability due to black lung.

Labor also concurred with our suggestion that the Congress consider amending the black lung legislation. Labor stated that black lung can now be diagnosed and disability established with a high degree of accuracy in claims by living miners, or where an autopsy is available, and that amendments to the law to reflect this fact are desirable.

In October 1981, Labor submitted a proposal to amend the black lung program to the Subcommittee on Oversight, House Committee on Ways and Means. This proposal contained the legislative changes that the Congress considered to require that better evidence support approval of future black lung benefit claims. Labor's proposal, however, did not change the legislative definition of pneumoconiosis, and without this change, we believe that Labor will have to continue to approve claims for pulmonary and respiratory impairments which may be aggravated but are not usually caused by coal mine dust. Because some of these impairments do not usually permanently damage the lungs, the condition could be improved or eliminated once the miner is removed from the coal mine.

CHAPTER 3

SCOPE OF REVIEW

Our review of Labor's approval of black lung claims included

--reviewing the legislative requirements of the Federal Coal Mine Health and Safety Act of 1969 and the 1972 and 1977 amendments; 1/

--reviewing Labor's policies, regulations, and procedures for processing black lung claims, including the standards used to establish disability;

--determining whether Labor's procedures and eligibility standards used for adjudicating black lung claims complied with the black lung legislation; and

--determining whether medical evidence established coal miner disability or death from black lung.

Our work was performed at Labor's headquarters in Washington, D.C., and Labor offices in Denver, Colorado; Pikeville/Mt. Sterling, Kentucky; Columbus, Ohio; Greensburg, Johnstown, and Wilkes-Barre, Pennsylvania; and Charleston and Parkersburg, West Virginia.

We interviewed Labor officials and pulmonary and respiratory specialists. We contacted these specialists to determine their views on the

--adequacy of Labor's new medical test values for determining disability,

--adequacy of chest X-rays for determining black lung and pulmonary function and blood gas tests for determining disability, and

--reasonableness of Labor's use of B-readers for re-reading chest X-rays.

METHODOLOGY

We selected random samples of 50 claims at each of the nine Labor offices responsible for processing claims--a total sample size of 450 claims. Additional information on our sample is contained on page 10.

1/The 1981 amendments to the Black Lung Benefits Act were passed by the Congress in December 1981. For the most part, these amendments only affect claims filed on or after their effective date.

We also obtained information on 191 miners who were involved in a study at the University of West Virginia Medical Center to determine how many of them were receiving black lung benefits and Labor's basis for approving their claims. The results of this study were contained in "Respiratory Disability in Coal Miners," an article published in the June 20, 1980, issue of the Journal of the American Medical Association.

CRITERIA FOR ESTABLISHING ADEQUACY OF MEDICAL EVIDENCE

We reviewed the case files for the following information, which enabled us to conclude whether medical evidence was adequate to establish total disability or death from black lung or whether there was a question relating to medical evidence:

--Medical evidence indicating that the miner had pneumoconiosis: X-rays, autopsies, and biopsies establish the presence of pneumoconiosis. We recognize that X-rays sometimes will not detect simple pneumoconiosis in its early stages.

--Medical evidence indicating that the miner was disabled, including X-rays, autopsy, and biopsy reports indicating complicated pneumoconiosis; pulmonary function and blood gas test results; and statements of disability by physicians which indicated medical evidence existed to support disability from black lung.

--Medical evidence indicating that the miner died from pneumoconiosis or other respiratory or pulmonary impairment, including death certificates and autopsy reports that listed a respiratory or pulmonary impairment as the primary or secondary cause of death.

In evaluating pulmonary function and blood gas test results for determining disability from black lung, we used the test values for meeting eligibility requirements in effect at the time Labor reviewed the claim. We also determined the effect that Labor's new standards--contained in 20 CFR 718--would have had on the claims approval rate.

Our medical advisor established the criteria for determining the adequacy of the medical evidence we used to establish black lung or disability or death from black lung. Moreover, he reviewed, in detail, cases in which there were questions related to the adequacy of this evidence.

We considered a miner disabled from black lung when he met Labor's test values for disability unless the claim had conflicting medical evidence, such as:

--A positive X-ray and a negative pulmonary function or blood gas test or a positive pulmonary function or blood gas test and a negative X-ray.

--A positive blood gas test and a negative pulmonary function test.

--A physician's statement that the miner had black lung or was disabled by black lung and negative medical evidence from X-rays, pulmonary function, or blood gas tests.

--The same medical tests administered several times within a 1-year period indicating both the presence and absence of black lung or disability.

--An X-ray interpreted differently by the board-eligible or board-certified radiologist and Labor's B-reader.

APPENDIX I

OUR REPORTS ON REVIEWS OF ADMINISTRATION OF THE BLACK LUNG BENEFITS PROGRAM UNDER THE FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, AS AMENDED

1. Report to the Chairman, Subcommittee on Labor, Senate Committee on Labor and Public Welfare, on problems being encountered by the Bureau of Mines, Department of the Interior, in its implementation of the provisions of the act relating to inspecting coal mines and correcting unsafe and unhealthy conditions (B-170686, May 13, 1971).

2. Report to the Special Subcommittee on Investigations, House Committee on Interstate and Foreign Commerce, on our examination of certain questions on the processing of claims for black lung benefits by SSA, HEW (B-170686, Aug. 3, 1971).

3. Report to the Congress on achievements, administrative problems, and costs of paying black lung benefits to coal miners and their widows by SSA, HEW (B-164031(4), Sept. 5, 1972).

4. Report to Senator Marlow Cook on alternatives to the payment of black lung benefits by the coal mining industry (B-164031(4), Mar. 13, 1973).

5. Report to Congressman John N. Erlenborn on information on attorney fees paid for State black lung workmen's compensation claims in Kentucky; SSA, HEW (B-164031(4), Jan. 8, 1974).

6. Report to the Special Studies Subcommittee, House Committee on Government Operations, on the need for further improvements in processing of widow's claims for black lung benefits; SSA, HEW (MWD-75-44, Dec. 31, 1974).

7. Report to the Congress on improvements still needed in coal mine dust-sampling program and penalty assessments and collections; Departments of Interior and HEW (RED-76-56, Dec. 31, 1975).

8. Report to the Subcommittee on Intergovernmental Relations and Human Resources, House Committee on Government Operations, on examination of allegations concerning administration of the black lung benefits program (MWD-76-72, Jan. 14, 1976).

9. Report to the Senate Committee on Human Resources on Labor's administration of the Black Lung Benefits Act of 1972 (HRD-77-77, July 11, 1977).

10. Report to Congressman John N. Erlenborn on SSA's reduction of Federal black lung benefit payments for State workmen's compensation payments (HRD-78-109, May 16, 1978).

11. Report to the Chairman, House Committee on Education and Labor, and the Chairman, Senate Committee on Human Resources, on the black lung benefits paid by Labor and SSA to miners and survivors who also received workmen's compensation payments (HRD-78-157, Sept. 6, 1978).

12. Report to the Congress on legislation allows black lung benefits to be awarded without adequate evidence of disability (HRD-80-81, July 28, 1980).

13. Report to Senator Richard S. Schweiker on followup on Department of Labor's actions on GAO's July 1977 report on administration of the black lung benefits program (HRD-80-111, Sept. 15, 1980).

SAMPLING ERRORS RELATED TO

ESTIMATES OF CLAIMS APPROVED

	Number of claims		Percentage of claims	
	Estimates	Sampling errors (note a)	Estimates	Sampling errors (note a)
Claims approved with inadequate medical evidence:				
Presumptions	28,900	5,741	48.4	7.8
Conflicting medical evidence	17,300	4,747	29.0	7.2
Affidavits	2,000	1,612	3.4	2.7
Unsupported medical opinion	1,500	1,398	2.5	2.3
Total approved with inadequate medical evidence	49,700	6,712	83.3	5.7
Claims approved with adequate medical evidence	9,900	3,520	16.7	5.7
Total approved (note b)	59,600	6,721	100.0 (42.2)	4.8

a/Sampling errors computed at the 95-percent confidence level.

b/The estimates of the total number and percentage of claims approved are based on 141,156 claims.

OTHER CLAIMS APPROVED WHEN MEDICAL TESTS DID NOT INDICATE DISABILITY

During late 1977 and early 1978, the Department of Labor referred 194 miners to the University of West Virginia Medical Center for medical tests--144 coal miners for pulmonary function tests, 44 miners for blood gas tests, and 6 miners for both tests. Based on the results of these tests, the university medical staff published a study in June 1978 on "Respiratory Disability in Coal Miners," which stated that eight claimants who took the pulmonary function tests and two claimants who took the blood gas tests would have met Labor's eligibility criteria for disability.

Our followup on 191 1/ of these miners showed that Labor had approved 97 and SSA had approved 3 of their claims--10 times as many approved claims as the study indicated were totally disabled.

The following table contains the results of our analysis of the 97 claims Labor approved:

Claims approved by Labor with inadequate medical evidence:		
Presumptions	70	
Conflicting medical evidence	5	
Unsupported medical opinion	2	77
Claims approved by Labor with adequate medical evidence		8
Claims approved by Labor (unable to locate case files--information obtained from payment records)		12
Total claims approved by Labor		97

Examples of claims that miners who participated in the study submitted to Labor and that Labor approved follow. The study indicated that these miners were not disabled by black lung.

--In October 1976, a 43-year-old miner with 16 years' proven coal mine employment applied for black lung benefits. In December 1977, the miner had a physical examination, an X-ray, and a pulmonary function test. These tests indicated that the miner did not have black lung or a disabling lung impairment. The X-ray showed a benign lesion in a lung, which the doctor thought was caused by a previous mining accident. Other X-rays taken in March 1971, May 1974,

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1/The medical staff that conducted these tests could not give us data to identify three of the miners.

and April 1978 indicated that the miner did not have black lung. A physician's report in February 1976 stated that the miner had pneumoconiosis and was unable to work because of shortness of breath. Another physical examination in May 1976 for a State workers' compensation claim resulted in the same diagnosis. A physical examination in April 1978 showed "some wheezing on forced ventilation" with no evidence of disability. A blood gas test taken in June 1978 showed no evidence of disability. Labor approved the claim on May 1, 1980, citing the February 1976 and April 1978 physicians' opinions.

--In November 1974, a 62-year-old miner with 13 years' proven coal mine employment applied for black lung benefits. In October 1977, the miner had a physical examination, an X-ray, and a pulmonary function test. These tests indicated that the miner did not have black lung or a disabling lung impairment. The doctor who conducted the physical examination concluded that the claimant suffered from chronic bronchitis. In January 1980, the claimant had the same medical tests performed again. The X-ray indicated that the miner did not have evidence of pneumoconiosis. The pulmonary function test met the eligibility test values for disability. The blood gas test showed that the claimant had normal blood gas levels. Labor approved the claim on March 18, 1980, citing the positive pulmonary function test and a presumption of the presence of black lung due to coal mine employment.

SUGGESTED AMENDMENTS TO

THE BLACK LUNG BENEFITS ACT

We suggest that the Congress consider the following changes to the Black Lung Benefits Act (30 U.S.C. 901 et seq.) to in effect require that medical evidence be the basis for determining disability due to coal workers' pneumoconiosis:

1. Section 902(b) should be amended to read as follows:

> "(b) For claims filed before the date of enactment of these amendments, [T]the term 'pneumoconiosis' means a chronic dust disease of the lung and its sequelae, including respiratory and pulmonary impairments, arising out of coal mine employment. For claims filed on or after the date of enactment of these amendments, the term 'pneumoconiosis' means coal workers' pneumoconiosis, a chronic dust disease arising out of coal mine employment that permanently damages the lungs." (New language underscored; deleted language bracketed.)

2. Section 902(f) should be amended to allow Labor to continue to use its existing regulations for determining disability for claims that have already been filed but to require that medical criteria be used to determine new claims. Thus, section 902(f)(1) should be amended to read as follows:

> "(f)(1) For claims filed before the date of enactment of these amendments, the * * *."

Section 902(f) should be amended by adding the following new subsection (3):

> "(3) For claims filed on or after the date of enactment of these amendments, a determination of a miner's total disability shall be based on the medical test criteria established by the Secretary of Labor in consultation with Director of the National Institute for Occupational Safety and Health."

3. Section 921(c)(3) should be amended by adding the following new sentence at the end thereof to eliminate the irrebuttable presumption based on years of coal mine employment:

"The provisions of this paragraph shall not apply with respect to claims filed on or after the date of these amendments."

4. Section 923(b) should be amended by adding the following language that would permit Labor to deny new claims solely on the basis of the results of a chest X-ray:

"(b) * * * under section 223 of the Social Security Act [42 U.S.C. 423], but no claim other than that involving a claim filed on or after the date of enactment of these amendments for benefits under this part shall be denied solely on the basis of the results of a chest roentgenogram." (New language underscored.)

5. Section 923 should be amended by adding the following new subsection (e):

"For claims filed on or after the date of enactment of these amendments, the Secretary of Labor in determining the validity of claims under Part C shall consider all relevant evidence including medical tests such as blood gas studies, X-ray examinations, electrocardiograms, pulmonary function studies, or physical performance tests and any medical history evidence submitted by the claimant's physician. Affadavits shall not be considered as relevant evidence. Medical history evidence of total disability or pneumoconiosis, as defined by these amendments, submitted by the claimant's physician shall be supported by the results of appropriate medical tests. Where there is no medical or other relevant evidence in the case of a deceased miner, autopsy evidence of complicated pneumoconiosis as defined in section 921(c)(3) shall be considered sufficient to establish that the dead miner was totally disabled due to pneumoconiosis. The Secretary of Labor shall promulgate regulations for resolving cases with conflicting medical evidence of either pneumoconiosis or total disability."

U.S. Department of Labor

Deputy Under Secretary for
Employment Standards
Washington, D.C. 20210

NOV 18 1981

Mr. Gregory J. Ahart
Director
Human Resources Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

This is in reply to your letter to the Secretary requesting comments on the draft GAO report entitled "Black Lung Benefits Awarded Without Adequate Medical Evidence of Black Lung or Disability".

The Department's response is enclosed.

The Department appreciates the opportunity to comment on this report.

Sincerely,

Robert B. Collyer
Deputy Under Secretary

Enclosure

GAO note: Page references in this appendix may not correspond to page numbers in the final report.

U.S. Department of Labor's Response to the
Draft General Accounting Office Report --

Black Lung Benefits Awarded Without Adequate
Medical Evidence of Black Lung or Disability

Recommendation:

"Pending actions by the Congress to amend the black lung legislation the Secretary should--provide guidance on the quantity and quality of the evidence needed to rebut the rebuttable presumptions contained in the black lung legislation, and--establish procedures to resolve conflicting medical evidence".

Response:

The Department concurs.

The Department agrees with the intent of the recommendation that Labor's policy guidance regarding evidence needed to rebut the legislated rebuttable presumptions and resolution of conflicting medical evidence be expanded. During FY 1981, there have been several administrative and court decisions addressing this subject which will be reflected in upcoming revisions of the Coal Mine (BLBA) Procedure Manual which provides policy guidance. Related policy guidance has already been specifically addressed in the "...Procedure Manual", specifically Chapters 2-501, and 2-1001 - 2-1006.

Additional Comments:

The specific comments which follow propose changes in the text to assure its technical accuracy, express concern that certain sections of the report do not adequately indicate that the Department's approval was not contrary to the law, and request more details in certain areas of the report.

Cover page:

The Department recommends that the title of the report be changed to: "Black Lung Legislation Allows Award of Benefits Without Adequate Medical Evidence of Black Lung or Disability", to reflect that legislation allows such payments. This proposed title is similar to that used by GAO in its report on SSA's administration of the Black Lung program. The similarity of GAO's findings in the studies of SSA and the Department of Labor (DOL) warrants a more accurate and consistent title for the DOL report than that used in the draft.

Cover Summary:

Line

1 Add the word consistent to the end of the line.

2 Substitute with for the first three words "not contrary to", and substitute and for but.

7 Insert legislated between "of presumptions".

9 Change period after the end of the line to a comma, and add the words consistent with applicable statutory provisions.

10 Insert the law should require between "that medical", and substitute as for the words "should be".

17 Insert additional between "establish procedures".

Page i:

Line/s

2 Insert pursuant to the law between "that,".

5-6 Substitute consistent with for "not contrary to".

7 Substitute require for allow.

Page ii:

Lines

20-23 Underline the entire sentence beginning with "where" and ending with "lung.".

Page iii:

Line

The heading "Benefits Awarded Without Adequate Medical Evidence" is misleading. There is an implication that the Department wrongfully approved those cases rather than appropriately applying criteria in effect which allows use of presumptions, e.g., 15 years, 25 years.

Line

8 Insert consistent with the statute after "although".

8 Move many claimants had medical impairments. to line 10 after inserting ,although following "lung".

12 Insert legislated between "following provisions".

Page iv:

Line

24 Insert to have between "have been".

24 Substitute despite for "without", and change "adequate" to inadequate.

26 Substitute consistent with and pursuant for "not contrary". (bottom)

Page v:

Line

2 Substitute required for "permitted".

8 Insert now between "can be".

10 Insert in cases in which either the miner is still alive or an autopsy can be performed between "ability (2)".

12 Insert consistent with a principle of workers' compensation that conflicting medical evidence shall be resolved in favor of the injured party (claimant)., after "medical evidence".

21-22 Insert future between "that black".

Page 7:

Line/s

1-8 Comment:

Where the Secretary determines that conditions of a miner's employment in a coal mine, other than an underground mine, were substantially similar to

conditions in an underground mine, the application of the presumption is not limited to employment in underground coal mines.

Page 8:

Line

8 Substitute established for "allowed".

Page 10:

Line

25 Delete "Under most circumstances".

Comment:

The 1977 amendments preclude payments of retroactive benefits for any period prior to January 1, 1974.

Page 14:

Line

7 Substitute must for "will".

8 Substitute require for "permit".

Comment:

The statement beginning with "However," on line 3 and ending with "evidence" on line 9, should be revised to reflect that Labor must approve claims based on the law and regulatory requirements.

Page 15:

Line (from the bottom)

5 Insert pursuant to law between "claims based", and legislated between "(1) presumptions".

Page 16:

Line/s

18 Change "legislative" to legislatively, and insert mandated between "legilsative/ly presumptions".

Page 16:

Line/s

20 Insert in our opinion between "files contained."

18-22 Comment:

The paragraph "Labor used...black lung" should be revised to also reflect that Section 435 prohibited Labor from developing additional evidence, when evidence on file was sufficient to establish eligibility under criteria not more restrictive than the criteria used by SSA before July 1, 1973. Thus, Labor was precluded by law from developing adequate medical evidence to support or rebut a determination of eligibility.

Page 18:

Line/s

13-21 It is suggested that the paragraph "Labor provided general policy guidance...rebut the claim" be amended to reflect the following comment.

Comment:

Chapter 2-501 of the Coal Mine (BLBA) Procedure Manual, in addition to giving the following general policy guidance, does provide specific guidance regarding weight to be given certain evidence, conflicting evidence and rebuttal evidence, to wit--

"The DC (Deputy Commissioner) is not required to accept the opinion or testimony of any particular medical expert except where the law requires that he/she do so, but must weigh the evidence presented. He/She must take qualified medical opinion into account, and without countervailing medical evidence, cannot simply disregard a qualified physician's medical opinion. Nor can the DC set his or her own expertise against that of a qualified physician, but, he/she can reject or assign little weight to the opinion of a physician whose basic medical assumptions are contrary to the findings and purposes of the Act."

Thus, we recommend that the paragraph in lines 13-21 be amended to reflect that Labor's concern "about getting claims approved" was consistent with Administration policy and Congressional intent.

Moreover, we are concerned about the statement attributed to "numerous Labor field officials" in lines 18-19, and would appreciate identification of the offices involved so that appropriate retraining can be immediately initiated.

Page 27:

Line/s

22-25 Comment:

The Department recommends that the statement beginning with "Labor" and ending with "benefits" reflect the clear Congressional intent "that the Secretaries undertake a broad campaign to notify individuals who may have become eligible for benefits, through appropriate organizations, groups, and coal mine operators."

Page 34:

Line

1 Substitute require for "permit" at the end of the line.

2 Insert and permit the use of between "presumptions, affidavits".

Page 35:

Line/s

4 (from the bottom)

Insert pursuant to law but between "claims without".

Page 36:

Line/s

Comment:

As indicated in the Department's preceding comments, we are concerned that GAO's conclusions do not adequately reflect that the application of legislated presumptions,

limitations on use of evidence, etc., were mandatory and not optional. We concur that black lung can now be diagnosed and disability established with a high degree of accuracy in claims by living miners, or where an autopsy is available, and that amendments to the law to reflect this fact are desirable.

9 Substitute required for "allowed".

11 Insert now between "can be".

13 Insert in claims from a living miner or when an autopsy is available after reliability.

17 Substitute required for "permitted".

19 Insert and permitted labor to after "employment,".

Page 37:

Line/s

7 (from bottom)

Insert have to between "will continue".

Page 38:

Comment:

On matters for Congressional consideration, the Department concurs with the conclusion that Congress should consider amending the black lung legislation. To this end Labor has submitted a proposal to amend the Black Lung program to the Subcommittee on Oversight, House Committee on Ways and Means. The proposal would eliminate the application of three presumptions, would limit the use of affidavits after the date of enactment, would eliminate the present restriction on Labor's authority to use a second opinion on x-rays that might indicate the absence of black lung disease, and would require Labor to submit legislative recommendations to the Congress within 18 months on: (1) the diagnosis of Black Lung, and (2) the relationship of complicated and simple pneumoconiosis (black lung) to disability.

Pages 41-43:

Comment:

The Department has considerable interest in obtaining details regarding the criteria established by GAO's medical advisor for determining the adequacy of the medical evidence that was used to establish black lung, disability, or death from black lung. Such details may be useful to Labor's staff in expanding current policy guidance on medical evidence.

(201635)